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ABSTRACT

This package is the seventh of twelve in the Skills for Adult Guidance Educators (SAGE) system, which provides instruction in a set of necessary competencies specifically designed for adult education counselors, teachers, and paraprofessionals. The materials provide a process for developing and implementing counseling and guidance programs unique to different target populations, program settings, and local conditions. Contents include ten modules that pertain to two role statements. The role statements describe the trainee objectives to demonstrate (1) ability to interact with local businesses, industry, and unions (8 modules) and (2) awareness of problems such as alienation, stereotyping, and racial discrimination encountered in a work environment (2 modules). Each module contains some or all of the following information: topic, learning objective, rationale, preassessment, learning activities, postassessment, and appended materials (supplemental activities, tape transcripts, and articles). (YLB)

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ED192137

SKILLS FOR ADULT GUIDANCE EDUCATORS.

Package 7

Exploring the Labor Market and Discrimination

Developed by

the

ADULT EDUCATION PROGRAM

of the

Northwest Regional Educational Laboratory
710 S. W. Second Avenue
Portland, Oregon 97204

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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Introduction

The goal of this package is to explore various aspects of community businesses, industry, and unions in order to promote career opportunities and prepare adults for entry or re-entry into the labor market. Emphasis is placed upon labor market terminology, trends, information resources, surveys, and anti-discrimination legislation and court decisions relative to employment.

Module 13.1 addresses the characteristics of racial discrimination in work environments. The purpose of this module is to create an awareness of various aspects of work discrimination. It is recommended that the trainee follow specific learning activities with close supervision. If the trainee wants to explore specific aspects of this problem for local communities, contacts should be made with Community Affirmative Action Agencies but not with specific employers or businesses.

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Role Statement 12.0

Demonstrate ability to interact with local businesses, industry, and unions

MODULE 12.1

TOPIC

Become familiar with labor market terminology.

LEARNING OBJECTIVE

The trainee will have a knowledge of labor market and employment terminology.

RATIONALE

An effective teacher/counselor needs to have a knowledge of labor market and employment terminology to be able to understand and better assist others in career guidance. Terminology is the necessary knowledge base of any discipline and not only defines that discipline but further expedites communication within that discipline.

PREASSESSMENT

Labor Market Terminology

Directions: On a separate sheet of paper define correctly nine of the eleven following terms as briefly as possible.

Employment

Unemployment

Surplus occupations

Demand occupations

Seasonal employment

Frictional unemployment

Economic depression

Mass unemployment

Cyclical unemployment

Technical unemployment

Seasonally adjusted unemployment rate

LEARNING ACTIVITIES

Learning Activity One

Obtain labor market bulletins by contacting State Department of Labor and Statistics.

Learning Activity Two

Call, visit, or write to your state department of labor and statistics for information regarding labor market terminology.

Learning Activity Three

Read the following:

(a) Borow, Man in a World at Work (Chapter 7)

(b) Doeringer and Piore, Internal Labor Markets and Manpower Analysis (Chapter 2)

(c) Norris, Zeran and Hatch, The Information Service in Guidance, pp. 31-64

(d) Oregon's Labor Force Trends (monthly)

(e) U. S. Department of Labor, Projections 1970 Interindustry Relationships, Potential Demand Employment

(f) U. S. Department of Labor, Technological Trends in Major American Industries

(g) Wolfbein, Occupational Information

(h) 1970 Census material

POSTASSESSMENT

Complete Preassessment by identifying ten out of the eleven terms correctly.

MODULE 12.2

TOPIC

Investigate labor market trends.

LEARNING OBJECTIVE

The trainee will have a knowledge of change factors in the labor market.

RATIONALE

Increasing comprehensive knowledge of the labor market will help develop self-confidence and a practical understanding of career guidance in the world of work for the adult teacher/counselor. Greater opportunity toward a fulfilling and realistic goal will be realized for the client.

PREASSESSMENT

Match with eighty percent accuracy the following statements with the most correct change factor. None of the change factors stand and it is understood that all are interdependent.

Change Factors

1 - length of working life

2 - composition of the work force

3 - occupations

4 - geography of American industry

5 - education and training prerequisites for employment

6 - wage determinants

7 - industrial structure

_____1. New York being the largest industrial employer in the U.S. affects the. . . .

_____2. The doubling of the life work expectancy between 1900-1955 indicates a drastic change in. . . .

_____3. Because the percentage of workers who are 14 years of age and over has remained relatively unchanged since 1900 does not indicate that the. . .of the work force has not changed in the last 70 years.

_____4. Transgressing from a goods producing economy to one of service producing indicate a change in the . . . .

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_____5. Demand occupations are those in which there is a shortage of workers in certain areas of the labor market, this is a factor in. . . .

_____6. A greater percentage of women in the work force today indicates a growing change in the. . . .

_____7. In 1955, 24.5 years of a person's life was spent outside the labor force as against 16.1 in 1900. This statistic exemplifies the changing. . . .

_____8. Technological advances in transportation, machinery and energy have released industry from fixed locations and have greatly affected the. . . .

_____9. A fewer percentage of those workers that are 65 years of age and over are a part of the labor force than in 1900. This gives us a drastic change in the. . .of the labor force in the upper age brackets.

_____10. One out of six jobs is located in California, Texas and Florida. This gives you a better view of the. . . .

_____11. There has been a tremendous growth in white collar work. This shows a change in the area of. . . .

_____12. In 1900, the average life expectancy was 48.2 years of age. Today it is over 67 years of age. More people are living longer and affecting the. . . .

_____13. A shift from farm industries to nonfarm indicates a change in the. . . .

_____14. A rising complexity of knowledge in the area of medicine, law and education has placed demands on the. . . .

_____15. The increased demand in professional and technical fields of work is changing the. . . .

_____16. Failure to fill vacancies in a job surplus area may be due to low. . . .

_____17. Futuristic concepts, regarding workers, foresee the "multioccupationalist worker" as specialist in many areas and fields of work. What three change factors will greatly be affected?

_____18. Technological advances are leapfrogging far beyond the limits of our learning institutions and systems of instruction.

_____19. In our society today a great deal of social significance and prestige is placed on. . . .

_____20. Managerial jobs are on the rise. What change factor is affected?

LEARNING ACTIVITIES

Study the seven dynamic change factors in the labor market listed below (see reading suggestions):

(1) (a) The changing length of working life

(b) The changing composition of the work force

(c) The changing industrial structure

(d) The changing occupations

(e) The changing geography of American industry

(f) The changing productivity of the American worker

(g) The changing educational and training prerequisites for employment

(2) Read:

(a) Borow, Man in a World at Work (Chapter 7)

(b) Norris, Zeran and Hatch, The Information Service in Guidance, pp. 31-64

(c) U. S. Labor Force Trends (monthly)

(d) U. S. Department of Labor, Projections 1970 Interindustry Relationships, Potential Demand Employment

(e) U. S. Department of Labor, Technological Trends in Major American Industries

(f) Wolfbein, Occupational Information

(g) 1970 Census material

POSTASSESSMENT

Complete the Preassessment.

MODULE 12.3

TOPIC

Conduct labor market survey and determine information resources.

LEARNING OBJECTIVE

The trainee will demonstrate an ability to make a labor market survey and to determine labor market information resources.

RATIONALE

In order to interact with the business community to stimulate job opportunities, you should become familiar with it. Knowledge of this labor environment will help you set realistic goals and approaches in aiding clients.

With rapidly changing technology, greater mobility, and mid-career changes, it is necessary for an adult education worker to be able to inform his/her clients about good career choices. Preparing a client for a career for which there is no market, or a decreasing one, or one which would require relocating, without informing the client of these facts, is poor advising. In addition, by understanding the local labor market you will better understand your clients. After all, this is the environment in which they live.

Finally, the mobility and changes which affect your clients also affect you. The ability to make this survey and find resources will help you in setting up shop in a new area.

PREASSESSMENT

The purpose of this section is to determine your background relative to the Learning Objective. If you feel you can answer the items, do so and submit them to your supervisor. Competency is assumed if the requested information is provided.

Part A

Write up a labor market survey of your area. The completed report must include the following information: (a) number of businesses, (b) principal products and services, (c) average number of employees, (d) major concentrations or locations, (e) accessibility of public transportation to employment, (f) city, county and state plans, (g) unemployment statistics, and (h) a brief forecast for the near future.

Part B

List at least five major sources of current labor market information including magazines, newspapers, or journals. This list should include the following:

1. Source or publisher
2. Frequency of issue
3. Kinds of employment covered
4. Any outstanding features regarding employment
5. Area or locale covered

LEARNING ACTIVITIES

Part A

You will make a labor market survey of your area. In the process, keep good notes on sources, persons and agencies consulted as a resource bibliography must be included in the final report.

If you work in a large or diversified labor market, it would be wise to organize your research around major trades (i.e., Agriculture, Retailing, etc.) or by skill (Clerical, Sales, etc.). Be more general in providing the information required in the Preassessment. If you work in a small or single industry area, then be as detailed as possible.

A suggested beginning point would be your State Employment Office. Other suggestions are:

1. City, county or state licensing bureaus
2. Business, agricultural and labor organizations or associations
3. Local and state planning agencies or boards
4. Chambers of Commerce
5. Large employers in the area
6. Transportation agencies
7. Civil service offices
8. Education and training institutions

To encourage independent research, you must personally visit at least four of the above. You may use the format in the Appendices A and B to document your visit.

Part B

Locate at least five major sources of current labor market information. Research them to provide the information mentioned in the Preassessment.

POSTASSESSMENT

(1) You will write a report summarizing your findings in the Learning Activities, Part A. This must include the information requested in the Preassessment. Also, include an annotated bibliography on sources, persons, and agencies consulted in researching the report.

(2) Complete the Preassessment, Part B.

Competency in the above is assumed if the required information is given and the independent research demonstrated. If the area surveyed is unfamiliar to the supervisor, the trainee must submit an appraisal of his work from one of the persons contacted in doing the research along with the report itself.

As an additional activity, the trainee should see that the completed report is sent out to the various places and persons contacted, or seek publication in a local journal or paper.

MODULE 12.4

TOPIC

Explore public and private job opportunities and employment programs.

LEARNING OBJECTIVE

Trainee will demonstrate a knowledge of some of the public and private programs designed to aid entry into the labor market.

RATIONALE

A good adult education worker must serve the client. Part of this service is to know sources of assistance to place the client or to prepare the client for career goals. To do this, it is obvious that the worker must learn all he/she can about the programs' operation in the area served.

PREASSESSMENT

The purpose of this section is to determine your background relative to the Learning Objective. If you can complete the item, do so and submit it to your supervisor as evidence of learning.

Identify at least eight of the following programs which operate in your area. For each, give the following information:

(a) Objectives of the program

(b) Funding source and duration

(c) Eligibility requirements

(d) Services provided

(e) Duration of services

(f) How administered

(g) Name of the director and contact person

(h) Address and telephone number

(i) Fees, if any

You may use the format appearing in Appendix A or make up your own.

Since programs change or disappear, the following list is not conclusive. You or your supervisor may add others of significance to your area. You must still report on at least eight and include the above information.

1. State Employment Service
2. Division of Vocational Rehabilitation (DVR)
3. Social Security Administration
4. Veterans' Administration
5. National Alliance of Businessmer
6. Public Employment Program
7. Retired Senior Volunteer Program (RSVP)
8. Neighborhood Youth Corps (NYC)
9. Residential Manpower Program
10. Work Incentive Program (WIN)
11. Comprehensive Education and Training Act (CETA)
12. Job Corps
13. Apprenticeship programs
14. Opportunities Industrialization Centers (OIC)
15. Work-study programs

LEARNING ACTIVITIES

Gather the information required to answer the Preassessment item. You may use the format or worksheet found in Appendix A. To ensure independent research, you must make a personal visit to each program you write about. You may use a sheet similar to Appendix B to document this visit. The State Employment Office is a good place to begin. Also, the "Catalog of Federal Assistance" can be of great help.

POSTASSESSMENT

Complete the Preassessment item. Also, document your visit and the person(s) seen. Competence is assumed if the required information is included.

APPENDED MATERIALS

APPENDIX A

PROGRAM INFORMATION SHEET

Name of program_____

Address_____ Phone_____

Directors's name_____

Contact person's name_____

Funding source_____

_____

Duration of funding or method_____

_____

Method of Administration_____

_____

General goals_____

_____

Nature of services provided_____

_____

_____

Eligibility requirements_____

_____

_____

Duration of services_____

Fees_____

APPENDIX B

PROGRAM VISITATION SHEET

Name of program_____

Date of visit_____

Person(s) visited_____ Title_____

_____ Title_____

Summary or comments on visit_____

_____

_____

_____

_____

_____

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MODULE 12.5

TOPIC

Investigate current anti-discrimination legislation and court decisions relative to employment.

LEARNING OBJECTIVE

The trainee will demonstrate a knowledge of current anti-discrimination regulations as they affect different aspects of employment.

RATIONALE

An adult education worker, in whatever capacity, must have some knowledge of anti-discrimination legislation. Many clients are unaware of these rights, while others have only misconceptions or exaggerated ideas. Many, incorrectly, feel this body of regulations is for "minorities only," and therefore doesn't apply to them.

In advising and preparing clients for the labor market, each should receive some minimal idea of his or her rights and how to seek redress. This knowledge may well prevent later misunderstandings or problems once the client enters the market. In order to do this, it is apparent that the adult education worker must first gain the necessary information.

PREASSESSMENT

If you can complete the item below, do so and submit it to your supervisor as evidence of learning.

For each of the listed categories note the major rules and regulations. When applicable, include references to age, sex, race, language, ethnic background, and education. Also, note any exemptions in coverage, and your state and local regulations. You may use a format of your own devising or the one suggested in the Appended Materials.

1. Hiring
2. Entry and promotional testing
3. Promotions
4. Dismissal
5. Union membership
6. Wages and hours
7. Working conditions

LEARNING ACTIVITIES

Through research and field visits, gather the necessary information to answer the Preassessment item. Some suggested places to contact are the following:

(a) Department of Labor, Civil Rights Division

(b) State Employment Offices

(c) State Attorney General or similar office

(d) Urban League

(e) State, county, or municipal rights commissions

(f) Wages and Hours or Fair Labor Practices of federal, state, or county Labor Departments

(g) National Labor Relations Board (NLRB)

(h) Any other agency you find of significance to the study

A handy place to begin locating the above is your phone book. The format in the Appended Materials might also be of service.

POSTASSESSMENT

Following the Learning Activities, submit a written report providing the information requested in the Preassessment item. Competence is a assumed if the necessary information is provided.

APPENDED MATERIALS

APPENDIX A

EMPLOYMENT RIGHTS INFORMATION SHEET

Category_____

Federal Regulations*

AGE_____

_____

SEX_____

_____

RACE_____

_____

LANGUAGE_____

_____

ETHNIC_____

_____

EDUCATION_____

_____

CITIZENSHIP_____

_____

SPECIAL EXEMPTIONS_____

_____

*Same sheet may be used for state and local practices

MODULE 12.6

TOPIC

Develop knowledge of Affirmative Action programs.

LEARNING OBJECTIVE

Trainee will demonstrate a knowledge of the history and operation of Affirmative Action programs and some steps you or your institution could take to aid such programs.

RATIONALE

Affirmative Action programs are much in the news today. Business and labor organizations have often set up such programs to prevent or redress grievances with regard to employees' rights. Often, they turn to the educational community to help them in implementing such programs. This would be particularly true if the educational institution had developed some expertise and knowledge of what an Affirmative Action program is and how it could be of service.

PREASSESSMENT

The purpose of this section is to determine your background. If you can complete a written report on both items, do so and submit it to your supervisor for evaluation.

(1) Describe what an Affirmative Action program is. This description should include a brief history of the program, its goals, and how it operates in a typical case.

(2) Describe at least one way you or your institution can be of service in implementing an Affirmative Action program with regard to hiring, promotions, or supportive services such as counseling or training.

LEARNING ACTIVITIES

Learning Activity One

If you have not already done so, do Modules 12.5 and 13.1 to gain familiarity with anti-discrimination rules and insight into discrimination and employment.

Learning Activity Two

Through contact with the Department of Labor, Civil Rights Division, find out what Affirmative Action is. Also, visit an employer in your area who has such a program and examine how it operates.

Learning Activity Three

Explore ways your institution can be of service in aiding an employer set up an Affirmative Action program.

POSTASSESSMENT

Complete the Preassessment items.

MODULE 12.7

TOPIC

Investigate job placement service procedures.

LEARNING OBJECTIVE

The trainee will be able to organize a placement information service and referral service and identify at least one contact person in each referral agency.

RATIONALE

Placement is a necessary part of vocational planning. Therefore, it is necessary that students be given proper direction for placement assistance.

PREASSESSMENT

(1) List at least three sources of placement information.

(2) List at least two referral agencies.

(3) List at least one contact person from each referral agency.

LEARNING ACTIVITIES

Learning Activity One

Visit your local library and find out what books are available pertaining to placement and occupations. For example: The Dictionary of Occupational Titles and Occupational Outlook Handbook.

Learning Activity Two

Visit at least two placement agencies (either the State Department of Employment or a private employment agency). Conduct an interview with a knowledgeable staff member (counselor, director, etc.) and ask for specific functions and steps provided by his office in securing employment for individuals.

Learning Activity Three

Read the appropriate sections in at least one of the following books or in a book of your choice:

(a) Guidance: Program Development and Management, Peters and Shertzer

(b) Organizing for Effective Guidance, Hollis and Hollis

(c) Fundamentals of Guidance, Shertzer and Stone

(d) Organization and Conduct of Guidance Services, Crow and Crow

(e) Career Counseling and Placement, Stephen and Everett

POSTASSESSMENT

Complete the Preassessment.

MODULE 12.8

TOPIC

Investigate work motivators and their relationship to job satisfaction.

LEARNING OBJECTIVE

The trainee will have a knowledge of work motivators and their relationship to job satisfaction as evidenced by completion of the pre/postassessment.

RATIONALE

An awareness and an understanding of work motivators and their relationship to job satisfaction is a necessary component of guidance counseling in relation to career development. Undoubtedly a prime reason for job dissatisfaction is the lack of motivational influence in the job and in the work environment. Understanding this will facilitate career planning.

PREASSESSMENT

Complete the following questionnaire and submit it to your supervisor for one-hundred percent approval.

(1) Among the factors of "accomplishment," "social situation," "money status" what appears to be your major motivators? What are the implications of this information for you in seeking a job?

(2) Indicate whether you agree ("A") or disagree ("D") with the following statements and comment on the reasons for your response.

(a) Job satisfaction is positively correlated with the degree of congruence between job conditions and one's personal values.

(b) The intensity of values you hold does not have significant effect upon the attainment of job satisfaction related to those values.

(c) Satisfaction with a given job varies with the values of the worker who holds the job.

(d) Differences in job satisfaction among persons having similar values will be associated with differences in their job or occupations.

(e) "Hygiene" factors in a job setting merely serve to keep one from being dissatisfied rather than producing satisfaction per se.

(f) When the opportunity occurs, people will usually change quickly to intrinsically more satisfying occupations even if additional education or experience is required of them.

(g) When economic security is threatened, financial rewards become dominant motivators; conversely, when safety-level goals are met, social, situational, and interpersonal relationships become important as motivators.

LEARNING ACTIVITIES

Learning Activity One

Create your own work motivation survey by conducting a study of ten or more adults. Attempt to discover what job factors are motivators for them. You may want to include such factors as:

1 - interesting work

2 - self-expression

3 - self-satisfaction

4 - salary

5 - security

6 - co-workers

7 - other work motivators

Include items such as sex, age, ethnic background, marital status, occupation, how long on job.

Learning Activity Two

Read the following:

(a) Borrow, Man in a World at Work (Chapter 15)

(b) Hackman, The Motivated Working Adult (Chapters 3, 8, 9)

(c) Patchen, Participation, Achievement, and Involvement on the Job, (Chapters 1, 3, 5, 6, 7)

(d) Thoroman, The Vocational Counseling of Adults and Young Adults (Chapters 1, 2, 3, 6)

POSTASSESSMENT

Satisfactory completion of the survey in Learning Activity One as evidenced by a written report of results will be considered as demonstrated awareness.

APPENDED MATERIALS

AN EXAMPLE SURVEY FORM

My survey was conducted at the Oregon State Employment Office to people who were checking the Job Bank for job openings.

In my survey, I asked the client what was the primary and secondary consideration in deciding what job they were seeking. My findings are shown in the charts below. Salary and the sense of self-satisfaction from the job seem to be the most important factors for these people. It is interesting that more men than women felt that job security was important.

		Age	Race	Education	Marital Status	Interesting Work	Helping Others	Self Satisfaction	Salary	Security
MALE	A	18	C	12	S		2	2	1	
	B	22	C	16	S	2		1		
	C	26	N	13	M				2	1
	D	45	C	16	M			1		2
	E	46	Mex.	12	M				2	1
FEMALE	F	24	C	17	M			2	1	
	G	25	C	17	S		2	2	1	
	H	32	N	12	M				2	1
	I	51	C	12	M		1		2	
	J	60	C	12	M		2	1		

Role Statement 13.0

Demonstrate awareness of problems such as alienation, stereotyping, and racial discrimination encountered in a work environment

MODULE 13.1

TOPIC

Discern characteristics of racial discrimination in a work environment.

LEARNING OBJECTIVE

Learner will become aware of the effects of racial discrimination (R/D) upon individuals and of how to identify it in a work environment.

RATIONALE

American society has divided itself into groups such as: the "white," the "in," the "right," the "front," the "dark," the "low," the "behind," and the "bottom."

Racial discrimination has been instrumental in fostering hostile attitudes and unequal work opportunities. The learner must become aware of such hostile attitudes and resulting discriminatory work practices. Such an awareness will enable the learner to properly discern whether such R/D exists in the work environment.

PREASSESSMENT

Respond to the following questions with one hundred percent accuracy.

(1) Define orally or in writing the following:

(a)	Race	(g)	Indirect discrimination
(b)	Racism	(h)	Direct discrimination
(c)	Individual racism	(i)	Discriminatory behavior
(d)	Institutional racism	(j)	Stereotype
(e)	Prejudice	(k)	Ethnocentrism
(f)	Discrimination	(l)	Attitudinal racism

(2) Explain two misconceptions about individual racism.

(3) Identify three qualities of institutional racism.

(4) Explain what is meant by the term "fair in form but discriminatory in operation."

(5) During the sixties (in the United States), violent confrontation took place between whites and non-whites. What two Congressional Acts were implemented to deal with the problem?

(6) (a) Who in the United States is usually the victim of R/D? Why? Be specific.

(b) Apply the same question to your particular state, town, community, etc. Compare national and local victims and explain the similarities.

(7) Explain orally or in writing to your supervisor why R/D "works." Also explain the effects of racial discrimination upon individuals. Be specific.

(8) What is the basic program dealing with institutional racism?

(9) Identify and describe six of eight racially discriminatory practices in a work environment.

(10) List three of four functions of the State Human Rights Commission (SHRC*) regarding racial discrimination.

(11) List and explain three of the major concepts dealing with R/D that are incorporated into Constitutional Amendments Five and Fourteen of the U. S. Constitution.

LEARNING ACTIVITIES

Learning Activity One

Read the R/D case of Griggs vs. Duke Power Co. 401 U. S. 424 (1971) in Appended Materials.

Learning Activity Two

After reading the Appended Materials visit the following people and agencies to discuss who the victims of R/D are and the affects it has upon them.

(a) Human Rights Commission

(b) Local government officials: e.g., Mayor, Legislators, etc.

(c) University and College Minority Affairs/Studies Department personnel.

*Your area may have a different name for the SHRC such as the Board Against Discrimination, etc.

(d)* Community, State or Federal groups addressing themselves to R/D.

(e)* Community leaders.

*If you are not already knowledgeable about groups and persons recommended in letters (d) and (e), ask persons interacted with in letters (a), (b) and (c) for their help in identifying them.

Learning Activity Three

Read the following reference to determine common practices of R/D in a work environment.

U. S. Constitution Principles of Employment Discrimination Law - Constitutional Projection Status, Administrative Order and Rules, and Court Decision. (See Appended Materials.)

Learning Activity Four

Visit the State Human Rights Commission, or another related agency in your area, and determine the specific functions that agency performs regarding R/D.

Learning Activity Five

Read the following three references to determine major concepts in Constitutional Amendments dealing with R/D. (See Appended Materials.)

1. Constitutional and Statutory Prohibitions Against Employment Based On Race, Religion, Sex or National Origin.
2. Fifth Amendment to the U. S. Constitution (Ratified in 1791).
3. Fourteenth Amendment to the U. S. Constitution (Ratified in 1868).

POSTASSESSMENT

Complete Preassessment with one hundred percent accuracy.

APPENDED MATERIALS

SUPREME COURT OF THE UNITED STATES

No. 124.--October Term, 1970

Willie S. Griggs, et al., Petitioners, v. Duke Power Company.	On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[March 8, 1971]

Mr. Chief Justice Burger delivered the opinion of the Court.

We granted the writ in this case to resolve the question whether an employer is prohibited by the Civil Rights Act of 1964, Title VII, from requiring a high school education or passing of a standardized general intelligence test as a condition of employment in or transfer to jobs when (a) neither standard is shown to be significantly related to successful job performance, (b) both requirements operate to disqualify Negroes at a substantially higher rate than white applicants, and (c) the jobs in question formerly had been filled only by white employees as part of a longstanding practice of giving preference to whites.[1]

Congress provided, in Title VII of the Civil Rights Act of 1964, for class actions for enforcement of provisions of the Act and this proceeding was brought by a group of incumbent Negro employees against Duke Power Company. All the petitioners are employed at the Company's Dan River Steam Station, a power generating facility located at Draper, North Carolina. At the time this action was instituted, the Company had 95 employees at the Dan River Station, 14 of whom were Negroes: 13 of these are petitioners here.

The District Court found that prior to July 2, 1965, the effective date of the Civil Rights Act of 1964, the Company openly discriminated on the basis of race in the hiring and assigning of employees at its Dan River plant. The plant was organized into five operating departments: (1) Labor, (2) Coal Handling, (3) Operations, (4) Maintenance, and (5) Laboratory and Test. Negroes were employed only in the Labor Department where the highest paying jobs paid less than the lowest paying jobs in the other four "operating" departments in which only whites were employed.[2] Promotions were normally made within each department on the basis of job seniority. Transferees into a department usually began in the lowest position.

In 1955 the Company instituted a policy of requiring a high school education for initial assignment to any department except Labor, and for transfer from the Coal Handling to any "inside" department (Operations, Maintenance, or Laboratory). When the Company abandoned its policy of restricting Negroes to the Labor Department in 1965, completion of high school also was made a prerequisite to transfer from Labor to any other department. From the time the high school requirement was instituted to the time of trial, however, white employees hired before the time of the high school education requirement continued to perform satisfactorily and achieve promotions in the "operating" departments. Findings on this score are not challenged.

The Company added a further requirement for new employees on July 2, 1965, the date on which Title VII became effective. To qualify for placement in any but the Labor Department it became necessary to register satisfactory scores on two professionally prepared aptitude tests, as well as to have a high school education. Completion of high school alone continued to render employees eligible for transfer to the four desirable departments from which Negroes had been excluded if the incumbent had been employed prior to the time of the new requirement. In September 1965 the Company began to permit incumbent employees who lacked a high school education to qualify for transfer from Labor or Coal Handling to an "inside" job by passing two tests— the Wonderlic Personnel Test, which purports to measure general intelligence, and the Bennett Mechanical Aptitude Test. Neither was directed or intended to measure the ability to learn to perform a particular job or category of jobs. The requisite scores used for both initial hiring and transfer approximated the national median for high school graduates.[3]

The District Court had found that while the Company previously followed a policy of overt racial discrimination in a period prior to the Act, such conduct had ceased. The District Court also concluded that Title VII was intended to be prospective only and, consequently, the impact of prior inequities was beyond the reach of corrective action authorized by the Act.

The Court of Appeals was confronted with a question of first impression, as are we, concerning the meaning of Title VII. After careful analysis a majority of that court concluded that a subjective test of the employer's intent should govern, particularly in a close case, and that in this case there was no showing of a discriminatory purpose in the adoption of the diploma and test requirements. On this basis, the Court of Appeals concluded there was no violation of the Act.

The Court of Appeals reversed the District Court in part, rejecting the holding that residual discrimination arising from prior employment practices was insulated from remedial action.[4] The Court of Appeals noted, however,

that the District Court was correct in its conclusion that there was no finding of a racial purpose of invidious intent in the adoption of the high school diploma requirement or general intelligence test and that these standards had been applied fairly to whites and Negroes alike. It held that, in the absence of a discriminatory purpose, use of such requirements was permitted by the Act. In so doing, the Court of Appeals rejected the claim that because these two requirements operated to render ineligible a markedly disproportionate number of Negroes, they were unlawful under Title VII unless shown to be job-related.[5] We granted the writ on these claims. 399 U. S. 926.

The objective of Congress in the enactment of Title VII is plain from the language of the statute. It was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees. Under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to "freeze" the status quo of prior discriminatory employment practices.

The Court of Appeals opinion, and the partial dissent, agreed that, on the record in the present case, "whites fare far better on the Company's alternative requirements" than Negroes.[6] This consequence would appear to be directly traceable to race. Basic intelligence must have the means of articulation to manifest itself fairly in a testing process. Because they are Negroes, petitioners have long received inferior education in segregated schools and this Court expressly recognized these differences in Gaston County v. United States, 395 U. S. 285 (1969). There, because of the inferior education received by Negroes in North Carolina, this Court barred the institution of a literacy test for voter registration on the ground that the test would abridge the right to vote indirectly on account of race. Congress did not intend by Title VII, however, to guarantee a job to every person regardless of qualifications. In short, the Act does not command that any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group. Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed. What is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification.

Congress has now provided that tests or criteria for employment or promotion may not provide equality of opportunity only in the sense of the fabled offer of milk to the stork and the fox. On the contrary, Congress has now required that the posture and condition of the job seeker be taken into account. It has—to resort again to the fable—provided that the vessel in which the milk is proffered be one all seekers

can use. The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited.

On the record before us, neither the high school completion requirement nor the general intelligence test is shown to bear a demonstrable relationship to successful performance of the jobs for which it was used. Both were adopted, as the Court of Appeals noted, without meaningful study of their relationship to job-performance ability. Rather, a vice president of the Company testified, the requirements were instituted on the Company's judgment that they generally would improve the overall quality of the work force.

The evidence, however, shows that employees who have not completed high school or taken the tests have continued to perform satisfactorily and make progress in departments for which the high school and test criteria are now used.[7] The promotion record of present employees who would not be able to meet the new criteria thus suggests the possibility that the requirements may not be needed even for the limited purpose of preserving the avowed policy of advancement within the Company. In the context of this case, it is unnecessary to reach the question whether testing requirements that take into account capability for the next succeeding position or related future promotion might be utilized upon a showing that such long range requirements fulfill a genuine business need. In the present case the Company has made no such showing.

The Court of Appeals held that the Company had adopted the diploma and test requirements without any "intention to discriminate against Negro employees." We do not suggest that either the District Court or the Court of Appeals erred in examining the employer's intent; but good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as "built-in headwinds" for minority groups and are unrelated to measuring job capability.

The Company's lack of discriminatory intent is suggested by special efforts to help the undereducated employees through Company financing of two-thirds the cost of tuition for high school training. But Congress directed the thrust of the Act to the consequences of employment practices, not simply the motivation. More than that, Congress has placed on the employer the burden of showing that any given requirement must have a manifest relationship to the employment in question.

The facts of this case demonstrate the inadequacy of broad and general testing devices as well as the infirmity of using diplomas or degrees as

fixed measures of capability. History is filled with examples of men and women who rendered highly effective performance without the conventional badges of accomplishment in terms of certificates, diplomas, or degrees. Diplomas and tests are useful servants, but Congress had mandated the common-sense proposition that they are not to become masters of reality.

The Company contends that its general intelligence tests are specifically permitted by 703 (h) of the Act.[8] That section authorizes the use of "any professionally developed ability test" that is not "designed, intended, or used to discriminate because of race. . . ." (Emphasis added.)

The Equal Employment Opportunity Commission, having enforcement responsibility, has issued guidelines interpreting 703 (h) to permit only the use of job-related tests.[9] The administrative interpretation of the Act by the enforcing agency is entitled to great deference. See, e.g., United States v. City of Chicago,--U. S.--(No. 386, O. T. 1970); Udall v. Tallman, 380 U. S. 1 (1965); Power Reactor Co. v. Electricians, 367 U. S. 396 (1961). Since the Act and its legislative history support the Commission's construction, this affords good reason to treat the Guidelines as expressing the will of Congress.

Section 703 (h) was not contained in the House version of the Civil Rights Act but was added in the Senate during extended debate. For a period, debate revolved around claims that the bill as proposed would prohibit all testing and force employers to hire unqualified persons simply because they were part of a group formerly subject to job discrimination.[10] Proponents of Title VII sought throughout the debate to assure the critics that the Act would have no effect on job-related tests. Senators Case of New Jersey and Clark of Pennsylvania, comanagers of the bill on the Senate floor, issued a memorandum explaining that the proposed Title VII "expressly protects the employer's right to insist that any prospective applicant, Negro or white, must meet the applicable job qualifications. Indeed, the very purpose of Title VII is to promote hiring on the basis of job qualifications, rather than on the basis of race or color." (Emphasis added.) 110 Cong. Rec. 7247.[11] Despite these assurances, Senator Tower of Texas introduced an amendment authorizing "professionally developed ability tests." Proponents of Title VII opposed the amendment because, as written, it would permit an employer to give any test, "whether it was a good test or not, so long as it was professionally designed. Discrimination could actually exist under the guise of compliance with the statute." Remarks of Senator Case, 110 Cong. Rec. 13504.

The amendment was defeated and two days later Senator Tower offered a substitute amendment which was adopted verbatim and is now the

testing provision of 703 (h). Speaking for the supporters of Title VII. Senator Humphrey, who had vigorously opposed the first amendment, endorsed the substitute amendment, stating: "Senators on both sides of the aisle who were deeply interested in Title VII have examined the text of this amendment and have found it to be in accord with the intent and purpose of that title." 110 Cong. Rec. 13724. The amendment was then adopted.[12] From the sum of the legislative history relevant in this case, the conclusion is inescapable that the EEOC's construction of 703 (h) to require that employment tests be job-related comports with congressional intent.

Nothing in the Act precludes the use of testing or measuring procedures; obviously they are useful. What Congress has forbidden is giving these devices and mechanisms controlling force unless they are demonstrably a reasonable measure of job performance. Congress has not commanded that the less qualified be preferred over the better qualified simply because of minority origins. Far from disparaging job qualifications as such, Congress has made such qualifications the controlling factor, so that race, religion, nationality, and sex become irrelevant. What Congress has commanded is that any tests used must measure the person for the job and not the person in the abstract.

The judgment of the Court of Appeals is, as to that portion of the judgment appealed from, reversed.

Mr. Justice Brennan took no part in the consideration or decision of this case.

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[1]The Act provides: "Sec. 703 (h) It shall be an unlawfull employment practice for an employer —

"(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

"(h) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer. . .to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex or national origin. . . ."

[2]A Negro was first assigned to a job in an operating department in August 1966, five months after charges had been filed with the Equal Employment

Opportunity Commission. The employee, a high school graduate who had begun in the Labor Department in 1953, was promoted to a job in the Coal Handling Department.

[3]The test standards are thus more stringent than the high school requirement, since they would screen out approximately half of all high school graduates.

[4]The Court of Appeals ruled that Negroes employed in the Labor Department at a time when there was no high school or test requirement for entrance into the higher paying departments could not now be made subject to those requirements, since whites hired contemporaneously into those departments were never subject to them. The Court of Appeals also required that the seniority rights of those Negroes be measured on a plantwide, rather than a departmental basis. However, the Court of Appeals denied relief to the Negro employees without a high school education or its equivalent who were hired into the Labor Department after institution of the educational requirement.

[5]One member of that court disagreed with this aspect of the decision, maintaining, as do the petitioners in this Court, that Title VII prohibits the use of employment criteria which operate in a racially exclusionary fashion and do not measure skills or abilities necessary to performance of the jobs for which those criteria are used.

[6]In North Carolina, 1960 census statistics show that, while 34% of white males had completed high school, only 12% of Negro males had done so. U. S. Bureau of the Census, U. S. Census of Population: 1960, Vol. 1, Part 35, Table 47.

Similarly, with respect to standardized tests, the EEOC in one case found that use of a battery of tests, including the Wonderlic and Bennett tests used by the Company in the instant case, resulted in 58% of whites passing the tests, as compared with only 6% of the blacks. Decision of EEOC, CCH Empl. Prac. Guide, 17,30453 (Dec. 2, 1966). See also Decision of EEOC 70-552, CCH Empl. Prac. Guide, 6139 (Feb. 19, 1970).

[7]For example, between July 2, 1965, and November 14, 1966, the percentage of white employees who were promoted but who were not high school graduates was nearly identical to the percentage of non-graduates in the entire white work force.

[8]Section 703 (h) applies only to tests. It has no applicability to the high school diploma requirement.

[9]EEOC Guidelines on Employment Testing Procedures, issued August 24, 1966, provide: "The Commission accordingly interprets 'professionally

developed ability test' to mean a test which fairly measures the knowledge or skills required by the particular job or class of jobs which the applicant seeks, or which fairly affords the employer a chance to measure the applicant's ability to perform a particular job, or class of jobs. The fact that a test was prepared by an individual or organization claiming expertise in test preparation does not, without more, justify its use within the meaning of Title VII."

The EEOC position has been elaborated in the new Guidelines on Employee Selection Procedures, 35 Fed. Reg. 12333 (August 1, 1970). These Guidelines demand that employers using tests, have available "data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior comprising or relevant to the job or jobs for which Guidelines are being evaluated." Id. . at 1607.4(c).

[10]The congressional discussion was prompted by the decision of a hearing examiner for the Illinois Fair Employment Commission in Myart v. Motorola Co. (The decision is reprinted at 110 Cong. Rec. 5662 (1964).) That case suggested that standardized tests on which whites performed better than Negroes could never be used. The decision was taken to mean that such tests could never be justified even if the needs of the business required them. A number of Senators feared that Title VII might produce a similar result. See remarks of Senators Ervin, 110 Cong. Rec. 5614-5616; Smathers, id. . at 5999-6000; Holland, id. . at 7012-7013; Hill, id. . at 8447; Tower, id. . at 9024; Talmadge, id. . at 9025-9026; Fulbright, id. . at 9599-9600; and Ellender, ibid.

[11]The Court of Appeals majority, in finding no requirement in Title VII that employment tests be job-related, relied in part on a quotation from an earlier Clark-Case interpretative memorandum addressed to the question of the constitutionality of Title VII. The Senators said in that memorandum: "There is no requirement in Title VII that employers abandon bona fide qualification tests where, because of differences in background and education, members of some groups are able to perform better on these tests than members of other groups. An employer may set his qualifications as high as he likes, he may test to determine which applicants have those qualifications, and he may hire, assign, and promote on the basis of test performance." 110 Cong. Rec. 7213.

However, nothing there stated conflicts with the later memorandum dealing specifically with the debate over employer testing, 110 Cong. Rec. 7247 (quoted from in the text above), in which Senators Clark and Case explained that tests which measure "applicable job qualifications" are permissible under Title VII. In the earlier memorandum Clark and Case assured the Senate that employers were not to be prohibited from using tests that determine qualifications. Certainly a reasonable interpretation of what the Senators meant, in light of the subsequent

memorandum directed specifically at employer testing, was that nothing in the Act prevents employers from requiring that applicants be fit for the job.

[12]Senator Tower's original amendment provided in part that a test would be permissible "if. . .in the case of any individual who is an employee of such employer, such test is designed to determine or predict whether such individual is suitable or trainable with respect to his employment in the particular business or enterprise involved. . . ." 110 Cong. Rec. 13492. This language indicates that Senator Tower's aim was simply to make certain that job-related tests would be permitted. The opposition to the amendment was based on its loose wording which the proponents of Title VII feared would be susceptible to misinterpretation. The final amendment, which was acceptable to all sides, could hardly have required less of a job relation than the first.

PRINCIPLES OF EMPLOYMENT DISCRIMINATION LAW-- CONSTITUTIONAL PROTECTIONS, STATUTES, ADMINISTRATIVE ORDERS AND RULES, AND COURT DECISIONS*

Introduction

The following pages contain a summary of the law of employment discrimination. "Law" is used here in its broadest sense: The word refers to a corpus of constitutional protections, administrative orders and rules, and court decisions in which questions of employment discrimination have been addressed.

IAOHRA has attempted to state accurately the present state of the law. There are four major sections in the outline: (I) Constitutional, Statutory and Administrative prohibitions against employment discrimination; (II) Specific Practices which have been found to be discriminatory; (III) Methods of Proof; and (IV) Methods of Belief. (An Appendix discusses certain proof problems and other legal issues and procedures associated with administrative charge processing at state and local levels.) Each sub-section states a principle or proposition of law. Where a proposition has been sanctioned by a court in which an employment practice has been challenged, the most important decisions of such courts are cited. Where necessary, important language from the opinions is quoted. Citations are to controlling Federal court authorities and are not meant to be exhaustive of all cases in which each principle has been applied to the facts of particular employment practices. The reader requiring a full understanding of any single principle and its applications is strongly encouraged to examine the texts of each of the cases cited.

Propositions have been stated only as broadly as current decisional law has framed them. Therefore it may be necessary, for certain fact situations, to analogize the practice in question to a particular practice where decisional law exists. (If a principle is stated as having been applied in race cases, for example, a practice in which sex is the issue may, by analogy, equally be illegal--indeed the practice may very likely be found illegal if challenged. In other words, the absence of a court decision directly addressing any question in this outline should not be read as a sanction for an employer's practice.)

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Amendment of several Federal laws in 1972 to cover public employees generally and faculty employment of higher educational facilities in particular similarly creates the need to address some public and campus employment practices by analogy. If a principle has been found to be illegal as to private employers, for example, it will very likely be found illegal for a public institution to pursue such a practice. (Indeed, public employers in general are more vulnerable than private employers to constitutional attacks based upon due process or equal protection arguments, viz., recent U. S. Supreme Court decisions on citizenship and maternity.) Whether an institution is public or private, however, it will be necessary to evaluate employment practices by analogizing them to prior case law simply because of the previous absence of Federal coverage and attendant litigation to date.

NOTE: This summary has been prepared by IAOHRA's Legal Division, Margaret McKenna, Esq., Director, under contract with the U. S. Equal Employment Opportunity Commission. The paper is meant as a guide for state and local civil rights law enforcement agency personnel and does not necessarily reflect, on every issue, the final policy determinations of EEOC, the Department of Justice or any other agency.

I. CONSTITUTIONAL AND STATUTORY PROHIBITIONS AGAINST EMPLOYMENT DISCRIMINATION BASED ON RACE, RELIGION, SEX OR NATIONAL ORIGIN.

A. U. S. Constitutional Protections and Statutes Enacted Pursuant Thereto.

1. Fifth Amendment to the U. S. Constitution (ratified 1791).

"No person shall. . .be deprived of life, liberty, or property, without due process of law;. . ."

NOTE: No Federal Statute implements the Fifth Amendment; the Amendment provides a direct cause of action against Federal deprivation of individual rights, or against joint participation by States with unconstitutional Federal activity.

2. Thirteenth Amendment to the U. S. Constitution (ratified in 1865):

"Sec. 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

"Sec. 2. Congress shall have power to enforce this article by appropriate legislation."

3. The Civil Rights Act of 1866 (codified as 42 U. S. C. 1981), enacted by Congress pursuant to the enabling provision contained in Section 2 of the 13th Amendment, above:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts. . .as is enjoyed by white citizens. . ."

NOTE: The 13th Amendment and Section 1981, speaking to slavery of black persons at the time adopted, have been generally held applicable to race discrimination but at least one case, Buerra V. Manchester Terminal 5EPd 8068 held that other minorities, namely Mexican Americans, were protected by the statute.

4. Fourteenth Amendment to the U. S. Constitution (ratified in 1868):

"Sec. 1. . .No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

"Sec. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

5. The Civil Rights Act of 1871 (codified as 42 U. S. C. 1983), enacted by Congress pursuant to the enabling provision contained in Section 5 of the 14th Amendment, above:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen. . .to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the person injured. . ."

NOTE: The 14th Amendment and Section 1983 apply to race, national origin and sex, Reed v. Reed, 404 U. S. 71 (1971). Sex-based

classifications are not subject to the same stringent standard of review as are race cases under the 14th Amendment; however, Fontiero v. Richardson, 411 U. S. 677 (1973), held that statutes creating sex based classifications are inherently suspect and may be so unjustifiable as to violate due process.

B. Federal Statutes and Implementing Regulations Governing Employment Discrimination

1. Civil Rights Act of 1964

(a) Title VI (42 U. S. C. 2000(d))

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

NOTE: Title VI, which does not speak to religion or sex, is applicable to employment actions of Federal grant-in-aid recipients only if the "primary objective" of the assistance is to provide employment, e.g., Shield Club v. City of Cleveland, 5 EPD 8406 (D-Ohio, 1973) (LEAA funds to increase police employment.)

Regulation issued by the Department of Justice pursuant to Title VI:

. . .Non discrimination in Federally Assisted Programs (28 C. F. R. 42.105) requires all applicants for federal financial assistance from the Department of Justice which has employment as its primary objective to ensure that both employment in and benefits of the federally assisted activities will be conducted on a nondiscriminatory basis.

(b) Title VII as amended by the Equal Employment Opportunity Act of 1972 (P.L. 92-261), 42 U. S. C. 2000(e). Its principal operative provisions:

DISCRIMINATORY PRACTICES

A. Overt Discrimination

Employment actions explicitly based upon race, color, religion, national origin, or sex are generally unlawful. An explicit refusal to hire, recruit, assign or promote a person or group--or a discharge--on any of these bases may be called an example of overt discrimination: the traditional "women can't do that so we don't let them apply" reasoning might be an example. While such actions are becoming less common--more subtle actions which have the effect of excluding minorities and women are gaining increasing attention, although overt discrimination still does occur and is still illegal. The following cases contain examples of overt discrimination proved in Federal Court actions:

Parham V. Southwest Bell Telephone Co., 433 F. 2d 421 (C. A. 8 1970). (outright refusal to hire blacks).

United States V. Bethlehem Steel, 446 F. 2d 652 (C. A. 2 1971). (restricting blacks to least desirable jobs).

United States v. Local 86 Iron Workers, 443 F. 2d 544 (C. A. 9 1971). (refusal to admit minorities into union membership).

United States v. Asbestos Workers Local 53, 407 F. 2d 1047 (C. A. 5 1969). (refusal of union to refer minorities to work).

United States v. Plumbers Local 73, 414 F. Supp. 160 (D. C. Ind., 1969). (refusal to admit minorities into apprentice programs).

Dobbins v. Electrical Workers Local 212, 292 F. Supp. 413 (S. D. Ohio, 1968). (deliberate use of test to discourage black applicants for union membership.)

B. Practices Fair in Form but Discriminatory in Operation

Title VII of the Civil Rights Act of 1964 proscribes not only overt or explicit discrimination as referred to above, but also prohibits practices that are fair in form but discriminatory in operation. The Supreme Court in construing Title VII in Griggs v. Duke Power Company, 401 U. S. 424 (1971), held that the employer has the burden of showing that any employment with a discriminatory impact must have a "manifest relationship" to the job in question. This approach of focusing on discriminatory effects rather than overt race-/or sex motivated conduct has opened the way for a broad use of fair employment laws to alter common personnel practices.

The Supreme Court said in Griggs:

> "The Act proscribes not only overt discrimination but also practices which are fair in form, but discriminatory in operation.

The touchstone is business necessity. If an employment practice cannot be shown to be related to job performance, the practice is prohibited."

Some examples of apparently neutral employment practices appear below which have been held unlawful by the Courts since they have had an adverse impact upon minorities and women and have not been job related.

1. Recruitment

Where a work force is all or substantially all white, reliance upon word-of-mouth dissemination of information about work opportunities is unlawful because it tends to provide information only to the friends and relatives of present employees. Similarly, it is unlawful to give false or misleading information to minority group persons, or to fail or refuse to inform them of work opportunities and the procedures for obtaining them. Although a sex based recruitment issue has not yet been litigated, it may be reasonable to argue that an analogy can be drawn, where for example, an all male work force effectively excludes women by limiting publicizing of vacancies only to men.

NOTE: HEW has reached this conclusion, not only with respect to recruitment, but also in other employment issues discussed below. The reader should consult the Higher Education Guidelines to understand the extent to which HEW has administratively adopted judicial reasoning to the employment actions of higher education facilities.

Some cases in which "fair recruitment" questions have been litigated are:

United States v. Georgia Power Co., 474 F. 2d 906 (C. A. 1973)

United States v. Iron Workers Local 86, 443 F. 2d 544 (C. A. 9 1971).

United States v. Sheet Metal Workers Local 36, 416 F. 2d 123 (C. A. 8 1969)

Clark v. American Marine Corp., 304 F. Supp. 603 (E.D.L.A., 1969, aff'd 437 F. 2d, 959 (C. A. 5, 1971))

Lea v. Cone Mills, 301 F. Supp. 97 (M.D.N.C. 1969, aff'd 438 F. 2d (C. A. 4 1971)).

2. Hiring Standards

(a) Educational Requirements

Where it can be shown that minority groups are less likely to possess educational qualifications required by an employer and where such qualifications are not job related, Courts will strike down the use of such criteria:

Griggs v. Duke Power Company, 401 U. S. 424. (1971)

(b) Tests

Tests utilized by employers which disproportionately screen out minorities as compared to non-minorities and which are not job related , are deemed unlawful by the Courts.

United States v. Georgia Power, 474 F. 2d 906 (C. A. 5 1973)

Griggs v. Duke Power Company, 401 U. S. 424 (1971)

Chance v. Board of Examiners, 458 F. 2d 1167 (C. A. 2 1972). (New York teacher promotion exam)

United States v. Jacksonville Terminal, 451 F. 2d 418 (C. A. 5 1971)

Carter v. Gallagher, 452 F. 2d 315 (C. A. 8 1972).

Castro v. Beecher, 459 F. 2d 725 (C. A. 1 1972)

(c) Relatives' Preference

Giving preference to relatives of incumbent employees with respect to employment opportunities is unlawful if said incumbents are substantially non-minority.

United States v. Asbestos Workers Local 53, 407 F. 2d 1047 (C. A. 5 1969).

(d) Height, Weight, and Physical Characteristics

Physical characteristics such as height, and weight which can have adverse impact upon certain ethnic groups or women are unlawful unless they can be shown to be job related.

Smith v. City of East Cleveland, 6 EPD 8831

Meadows v. Ford Motor Company, 5 EPD 8468

(e) Arrest Records

The use by an employer of an arrest record as a per se disqualification, if it is shown to have a disproportionate impact.

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Gregory v. Litton Industries, 316 F. Supp. 401 (C. D. Cal. 1970)

(f) Discharge due to garnishment

Firing of minority is illegal because a disproportionately higher number of minorities are subjected to garnishment procedures.

Johnson v. Pike, 332 F. Supp. 490 (N.D. Cal. 1971)

Contra;Wallace v. Debron, 6 EPD 8855 (E.D. Mo. 1973)

(g) U. S. Citizenship

While Title VII of the 1964 Civil Rights Act does not prohibit discrimination on the basis of citizenship or alienage, Espinoza v. Farah Manufacturing Co., Inc., 6FEP Cases 933 (U. S. 1973), the same type of discrimination has been found to violate the Fourteenth Amendment's equal protection guarantee where a statute denies aliens the right to hold position with state governments, Sugarman v. Dougall, 5FEP 1152 (U. S. 1973). A U. S. Civil Service Commission regulation which indiscriminatingly excluded all aliens from all positions was found to violate the Due Process Clause of the Fifth Amendment.

At least one case has found that a private employer may not discriminate against aliens.

Guerra v. Manchester Terminal, 5EPD 8068. (Case was brought under 1981)

(h) Sex Stereotypes

An employer may not restrict jobs to individuals of any one sex based on sexual stereotypes.

Diaz v. Pan American Airways, Inc., 442 F.2d 385 (C. A. 1971).

Weeks v. Southern Bell Telephone Co., 408 F.2d 228 (C. A. 5 1969)

Phillips v. Martin Marietta, 400 U. S. 542 (1971)

(i) Veteran's preference

The Minnesota veteran's preference laws were unsuccessfully challenged as a denial of equal protection; the law in question gave an absolute preference to all veterans who had passed the entry civil service exam and were placed on eligibility lists and a 5 point

preference to veterans on all promotional exams. Koelgen V. Jackson, _____ U. S. _____ (1972), 41 LW 3502. Pennsylvania's veteran's preference laws were also unsuccessfully challenged by a female plaintiff and held to be constitutionally valid. Feinerman v. Jones _____F. Supp. _____ (M.D. Pa. 1973), 6EPD 8807.

(j) "Rule of Three"

The "rule of three" selection system was found to be susceptible to subjective discriminatory application and the court ordered it replaced by a "rule of one."

Strain v. Philpott, 331 F. Supp. 836 (M.D. Ala. 1971).

3. Promotion, Transfer, Layoff, and Benefits

(a) Seniority Systems

Security systems may have the effect of perpetuating past discriminatory job assignment practices. In industry, for example, minorities and women prior to the passage of civil rights legislation were often assigned only to "hot, dirty, low-paying" departments of a multi-department plant. Rules sanctified by collective bargaining agreements prohibited transfers. Upon the advent of civil rights legislation, no-transfer rules were often dropped, but any person making a transfer lost all accrued seniority and began building seniority in the new department. The effect, clearly, is to "freeze" minorities and women into less favorable departments. Finding such systems illegal, courts have ordered modification of collective bargaining agreements to provide that "plant security" becomes the basis for competition for promotion, transfer and resistance to layoff.

Local 189 United Papermakers v. United States, 416 F. 2nd 980 (C. A. 5 1969).

Robinson v. P. Lorillard Company, 444 F.2d 791 (C. A. 4 1971)

Bowe v. Colgate-Palmolive Co., 416 F.2d 711 (C. A. 7 1969).

United States v. Bethlehem Steel, 446 F.2d 652 (C.A. 2 1971)

United States v. Jacksonville Terminal, 451 F.2d 418 (C. A. 5 1971)

United States v. St. Louis-San Francisco Railway Co., 464 F.2d 301 (C. A. 8 1972)

United States v. Libby Owens Ford, Inc., 3 EPD 8052 (consent order D-Ohio 1971) (Sex based seniority system)

(b) Collective Bargaining Agreement Experience

Where minorities have been excluded from employment under a given collective bargaining agreement or have been denied a particular job because of their race or national origin, it is unlawful to grant preferences in hiring, promotion or layoff to those who were given the opportunity to gain such experience under the collective bargaining agreement or in the job.

United States v. Hayes International, 415 F.2d 1038 (C. A. 5 1969) 456 F.2d 112 (C. A. 5 1972)

United States v. Electrical Workers Local 38, 428 F.2d 144 (C. A. 6, 1970)

(c) Sex

Employers may not restrict promotions, transfers, layoffs, and benefits to persons of either sex.

Diaz v. Pan American World Airways, Inc., 442 F.2d 385 (C. A. 5 1971) (held sex was not a BFOQ for position of cabin attendant and companies failure to hire men constituted violation of Title VII)

Cohen v. Chesterfield County School Board, Cleveland Board of Education v. Le Fleur, - U. S. -, 6 F.E.P. 1253 (1974) (held it was a violation of Due Process Clause of 14th Amendment to maintain a mandatory leave policy as to pregnant women.

Sprogis v. United Airlines, Inc., 444 F.2d 1194 (C. A. 7, 1971) (held that it was illegal to apply "no marriage" rule solely to stewardesses and not to male employees and that this regulation could not be justified as a BFOQ or because of customer preference.)

Fontiero v. Laird, 411 U. S. 677 (1973) (held that certain statutes violated the Due Process Clause of the Fifth Amendment in that the government always provided housing and medical benefits to spouses of servicemen but only provided some benefits to spouses of servicewomen on a showing that the women provided over half of the support of their husbands.)

Weeks v. Southern Bell Tel & Tel Co., 408 F.2d 228 (C. A. 5 1969) (Refusal to consider woman for job of switchman unlawful even though job was "strenuous." Court held that company must have reasonable basis for concluding that all or substantially all women would be unable to perform job before sex could attain status of BFOQ.)

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[1]Reginald Jones. Black Psychology. New York: Harper and Row, 1972 (p. 311).

[2]Gerald Baptiste. The Vertical and Horizontal Division of Whites and Non-Whites in Washington State Government. Washington: Minority Student Coalition of the Evergreen State College, Olympia, and jointly sponsored by: The Thurston County Urban League, Evergreen State College (pp. 80 and 84).

[3]Thomas I. Emerson, David Haber and Norman Dorsen. Political and Civil Rights in the United States, Third Edition (1967), 1971 Supplement to Volume II (pp. 125 and 1467).

[4]Charles V. Willie, Bernard M. Kramer, Bertram S. Brown. Racism and Mental Health (p. 269).

[5]Stokely Carmichael and Charles V. Hamilton. Black Power: The Politics of Liberation in America (p. 3).

MODULE 13.2

TOPIC

Become familiar with problems of vocational choice facing ethnic minorities and women.

LEARNING OBJECTIVE

The trainee will be able to recognize some specific problems of vocational choice which face racial or ethnic minorities and women. The trainee will assist them in developing alternatives and specifications, if possible, of an immediately applicable choice.

RATIONALE

Vocational choices is in itself often times an anxiety producing and frustrating endeavor. A teacher/counselor needs not only to be aware of general career opportunities, but also of specific problems of vocational choice facing racial or ethnic minorities and women. To better assist minorities and women in developing and making career choices the teacher/counselor should be aware of their specific vocational choice problems.

PREASSESSMENT

(1) Using the following value dimensions (or concepts) indicate specific differences which might exist between Chicano, the American Black, the Indian, and the so-called "dominant culture." Relate your observations to problems of vocational choice.

	Black	Chicano	Indian	Anglo
Work				
Material Achievement				
Speech				
Punctuality				
Conformity				
Ownership of things				
Emotions				

(2) What barriers may exist for women in making occupational choices?

LEARNING ACTITIVIES

Learning Activity One

Read: Angelou, I Know Why the Caged Bird Sings

Bardwick, Psychology of Women

Cassara, American Women: The Changing Image

"Culture as a Reason for Being," Personnel and Guidance Journal, October, 1971

Ellison, Invisible Man

"Excerpts from Blaming the Victim"

Galarza, Merchants of Labor; The Mexican Bracero Story.

Galarza, Spiders in the House and Workers in the Fields

Hart, "Toward More Effective Counseling of Minorities," Journal of College Placement, October, 1969

Houghton Mifflin, Guidance Monograph Series, Set VI

Holland, The Forgotten Minority: American's Tenant Farmers and Migrant Workers

Killingsworth, Jobs and Income for Negroes

Kreps, Sex in the Market Place: American Women at Work

Lewis and Locke, "Racism Encountered in Counseling," Counselor Education and Supervision, Fall 1969

Lifton, The Woman in America

Pearl, New Careers for the Poor

Thoroman, Vocational Counseling of Adults and Young Adults

Thurman, The Blacker the Berry

Valentine, Culture and Poverty: Critique and Counter Proposals

Vontross, "Counseling Blacks," Personnel and Guidance Journal, May, 1970

"What Guidance for Blacks," Personnel and Guidance Journal, May, 1970

Williams, The Angry Ones

"Women and Counselors," Personnel and Guidance Journal, October, 1972

Wright, Black Boy

Learning Activity Two

Counsel minority clients and women at placement. Provide evidence of assisting two or more clients with an "appropriate" vocational choice. One choice should not necessarily reflect stereotyped roles or traditional occupational choice.

POSTASSESSMENT

Complete Preassessment